

**RULES OF THE
DISTRICT COURT OF THE
ELEVENTH JUDICIAL DISTRICT**

EFFECTIVE NOVEMBER 3, 1995

(Including Amendments)

SCOPE AND EFFECTIVE DATE

These rules for the district court of the 11th Judicial District shall become effective upon approval by the Supreme Court and publication in the Nebraska Advance Sheets and shall supplement the Uniform District Court Rules of Practice and Procedure adopted by the Supreme Court.

Adopted effective November 3, 1995.

RULE 11-1

TERM OF COURT

There shall be one term of court in each county. The term shall begin on the first work day in January and end on the last work day of December.

Adopted effective November 3, 1995.

RULE 11-2

CORRESPONDENCE WITH THE COURT

All correspondence with the court shall include the name, number and county of the case involved. A copy of all correspondence shall be sent to opposing parties. If the correspondence entails the transmittal of pleadings, orders, judgments, or journal entries, pre-addressed stamped envelopes sufficient for that purpose shall be enclosed.

Adopted effective November 3, 1995.

RULE 11-3

CASE PROGRESSION

A. **CASE PROGRESSION STANDARDS:** In any case where the court has determined that there is a lack of sufficient prosecution under the case progression guidelines established by the Nebraska Supreme Court, or such shorter period as may be appropriate

under the circumstances, the court may enter an order to show cause why the case should not be dismissed, or the court may, after notice and opportunity for a hearing, enter a dismissal of the case. Any order of dismissal may be set aside within the term upon motion, notice, and good cause shown.

B. AUTOMATIC CASE PROGRESSION: When a civil jury case is first filed with the Clerk of the District Court, it shall be immediately given to the assigned judge. The judge shall issue an order setting out the date for pleadings to be complete not inconsistent with the law, a date for completion of discovery, a date for a pretrial conference, and a proposed trial date. These dates shall be binding upon all parties to the litigation unless one or more of them, by motion and upon good cause being shown, but without hearing, request that the case not be handled in the expedited manner as set out in this rule.

C. PRETRIAL AND POST-TRIAL MOTIONS:

(i) Unless otherwise ordered by the court, all pretrial and posttrial motions or similar filings which require a hearing shall be filed at least three days prior to the hearing. The party or counsel so filing shall obtain a date for the hearing at the next available motion day, or sooner if necessary. The party or counsel shall file a notice of hearing with any such pleading or motion which requires a hearing. The notice of hearing may be placed on the pleading or motion itself and, in any event, is to be served on opposing parties with the pleading or motion. Any pleading or motion that is filed without a date for hearing being set or without a notice of hearing having been obtained shall be filed by the clerk and immediately brought to the attention of the Court. The Court may, on its own motion after hearing, overrule the motion or strike the pleading from the file for failure to comply with this rule or set the matter for hearing, upon proper notice, and/or assess sanctions, including attorney fees, against the party in violation of the rule. The use of ordinary mail for notice of hearing shall constitute sufficient compliance with this rule except as may be otherwise required by statute or Supreme Court rule.

(ii) Any party required to plead or plead further after a ruling on a special appearance, demurrer or motion, shall do so within ten (10) days. If a party chooses to answer, the answer shall be filed within twenty (20) days.

(iii) All hearings on all motions or pleadings may be heard by telephone conference. The party wishing to set a motion by telephone conference shall arrange the time for the conference and shall initiate the conference call and be responsible for the expense of the call. No oral testimony may be adduced during any telephone conference. All evidence to be adduced during any telephone conference shall be submitted to the court and to opposing counsel no less than 5 days prior to the hearing. Any such telephone proceeding held pursuant to Neb. Rev. Stat. § 24-734 (Reissue 1989) shall not exclude the general public except as provided by law or Supreme Court rule.

(iv) Motion days shall be set for the various counties by the court. On any motion day, each judge will hear any case regardless of to whom the case is assigned. However, the judge will not hear final contested divorces, contested modification of divorce decrees,

sentencings, preliminary criminal motions except arraignments, or any final contested matter unless it is assigned to that particular judge.

(v) The court shall be available to sign any orders, judgments, journal entries, or to consider any other matter during recess in any trial or at any other time requested by counsel.

(vi) It shall be the duty of the counsel for the side in whose favor a decision is rendered or order is made to promptly prepare a journal entry or order. The proposed journal entry or order shall be delivered for signature within ten (10) days. Opposing counsel or party shall be mailed a copy of the proposed journal entry or order. If there is an objection to the proposed journal entry or order, it shall be the duty of the objecting party to contact the court and state the objection. The court will then determine whether to sign the journal entry or order or require preparation of a new one. It shall be the duty of the counsel for the party in whose favor a judgment or decree has been entered to immediately notify the Clerk of the District Court of such judgment or decree. No file may be removed from the courthouse until the Clerk has been notified of the judgment or decree. Upon such notification the file may be checked out to counsel to allow preparation of the judgment or decree.

D. CONTINUANCES: Motions for continuances shall comply with Nebraska Statutes and be set for hearing prior to the original date for trial of the matter sought to be continued. Further, all motions for continuance shall be submitted to opposing counsel prior to any hearing. Opposing counsel shall indicate on the motion that there is no objection to the motion, that the opposing counsel objects to the motion but agrees to submit the motion without argument, or objects to the motion. If opposing counsel objects to the motion it shall be set for hearing as any other motion. If there is no objection or if opposing counsel agrees to submit the motion without argument, the court will review the motion without further hearing. The decision to grant or deny a motion for continuance rests finally with the court.

E. DISCOVERY: No motion concerning discovery will be heard by the court unless the moving party certifies that opposing counsel has been contracted and a good faith effort has been made to resolve any dispute in regard to discovery. The certification shall include copies of any correspondence between counsel in regard to the discovery dispute.

F. MOTIONS FOR SUMMARY JUDGMENT: Counsel for each party shall submit a brief in support of or in opposition to the motion for summary judgment. The briefs shall contain a reference to the evidence submitted specifically noting the discovery response or portion of the depositions by line and page that is relied upon by that party in regard to whether or not there are material issues of fact to be decided by the trier of fact.

Adopted effective November 3, 1995; Rule 11-3C(iii) and 11-3D amended effective January 16, 2002; Rule 11-3E and 11-3F adopted effective January 16, 2002.

RULE 11-4

DOMESTIC RELATIONS CASES

A. CONTESTED CUSTODY: Whenever counsel determines that custody of minor children will genuinely be contested, the court shall be informed in order that appointment of a guardian ad litem may be considered. If a guardian ad litem is appointed, the guardian's report shall be filed with the court and copies given to counsel no later than ten days before trial and, with the approval of the court, be updated at the time of trial.

B. IV D CASES: The county attorney shall be notified of any temporary hearings, final hearings, modifications or actions to release a child support lien which involve parties who are receiving assistance from the Department of Health and Human Services or the State of Nebraska, have filed assignments to the Department of Health and Human Services or the State of Nebraska, or who have an obligation to the Department of Health and Human Services or the State of Nebraska.

C. DECREES: All decrees of dissolution, separation, or property settlements referred to in decrees shall contain both parties' social security numbers and the social security numbers of the affected children. The vehicle identification numbers of all vehicles affected by the decree and the legal description of all real estate affected by the decree shall also be included.

D. PROPERTY STATEMENT: Both parties shall submit a combined exhibit listing all of the assets and liabilities of the marriage on a form prescribed by the court, a copy of which is attached to these rules. A different form than the one adopted as part of these rules may be used if the same information is supplied.

The applicable provisions of rule 11-5(C) relating to pretrial orders shall apply to domestic relations cases. In addition, however, the petitioner shall first prepare the exhibit by placing the petitioner's values on the property statement. The exhibit shall then be submitted to the respondent who shall place values on the exhibit and return it to the petitioner. The petitioner shall submit the exhibit to the respondent no less than thirty (30) days prior to trial and the respondent shall return it to the petitioner no less than twenty (20) days prior to trial. The joint property exhibit, signed by counsel and the parties, shall be filed with the clerk of the district court no less than ten (10) days before trial. A copy of the exhibit shall also be sent to the judge no less than ten (10) days before trial. The court shall prepare a pretrial order which shall include the joint property exhibit. The pretrial order shall be binding on the parties.

The parties shall also prepare and submit to the court no less than ten days prior to trial separate child support guidelines calculations including all supporting documents required by the guidelines. The calculation shall also include any proposed deviations from the guidelines and the reasons for the deviations.

E. PROTECTION ORDERS: All applications for protection orders pursuant to Neb. Rev. Stat. § 42-901 et seq. (Reissue 1993) shall be on the form prescribed by the court. No protection orders shall be set aside unless the applicant appears in person and states affirmatively, on the record, that the protection order should be set aside. A copy of this rule shall be supplied to all applicants for and respondents to protection orders by the Clerk of the District Court.

Adopted effective November 3, 1995; amended effective May 22, 1998; Rule 11-4A - 11-4D amended effective January 16, 2002.

RULE 11-5

TRIALS AND PRETRIALS

A. TERMS: Civil and criminal jury terms shall be set in Dawson and Lincoln Counties each year by the judges of the district. A schedule of such terms shall be distributed to the bar in the district and to all other attorneys who request such a schedule. Jury trials in the other counties of the district shall be set by the court for each particular case.

B. PRELIMINARY CONFERENCES: Preliminary conferences shall be held after a case is at issue. Preliminary conferences may be held by telephone conference. If the Court has determined that the expedited procedures set forth in rule 11-3(B) shall not apply, a preliminary conference may be scheduled by either party or the court on its own motion. At the preliminary conference, counsel shall be prepared to:

- (i) Complete the pleadings;
- (ii) Set a schedule for completion of discovery;
- (iii) Arrange for physical examination of any party involved in an action for personal injury;
- (iv) Set a time for trial;
- (v) Set a time for pretrial conference;
- (vi) If counsel and parties are willing to do so, waive a jury trial or stipulate to a six person jury if possible.

C. PRETRIAL CONFERENCES: Pretrial conferences shall be scheduled as near as practicable to the time set for trial of the action. At the pretrial conferences, trial counsel shall be present and shall be prepared to:

- (i) Finalize the issues in the case;

(ii) Stipulate to all uncontested matters, including liability, medical expenses, property damage, other losses, and the fairness and reasonableness of any estimate or actual loss or damage;

(iii) File a witness list with the name and address of all witnesses to be called in the case in chief;

(iv) Mark all exhibits to be offered at trial;

(v) If there are no objections, to waive foundation or stipulate to the admission of exhibits;

(vi) Estimate the length of trial;

(vii) Estimate the length of voir dire;

(viii) Submit preliminary proposed jury instructions and trial briefs;

(ix) Discuss with the court all efforts made to settle the case and have available the parties or their representatives in order to continue negotiations for settlement of the case.

Unless otherwise ordered, the court shall prepare a final pretrial order based on the agreements at the pretrial conference which shall be binding on the parties.

D. INSTRUCTIONS: All proposed instructions shall be filed prior to the conference on instructions. Counsel shall be prepared to conduct the conference on instructions immediately following the final rest entered in the case. Counsel shall be prepared to argue the case immediately following the conference on instructions.

E. AVAILABILITY OF COUNSEL: Counsel shall be available on short notice, either personally or by phone, as ordered by the court, during jury deliberations in the event the jury has a question or verdict is reached. The clerk or bailiff shall be notified of counsel's location unless counsel is excused.

F. ABSENCE OF COUNSEL: In civil cases, it is not necessary that any party or counsel be present when the verdict is read. Counsel and the defendant shall both be present when a verdict is returned in a criminal case.

G. FAILURE TO COMPLY: Failure to comply with the rules of this court, without good cause having been shown, shall subject the party or counsel to sanctions, and a dismissal or judgment may be entered against a non-complying party or a non-complying counsel for that party.

Adopted effective November 3, 1995.

RULE 11-6

ATTORNEY'S FEES

All applications for attorney's fees for appointed counsel shall be in writing listing time and expenses involved. Fees for representation in District Court shall be seventy-five dollars (\$75.00) per hour except in exceptional cases when a higher fee may be set by the court upon request of counsel. The court will review and adjust the rate on a yearly basis commencing January 2003.

Adopted effective November 3, 1995; amended effective January 16, 2002.

RULE 11-7

EXHIBITS

Exhibits may be released under the following conditions:

- (i) Upon motion of an introducing party or counsel, to such party or counsel if a motion is made to substitute a copy and the motion is granted;
- (ii) Upon motion of an introducing party or counsel, after trial if the appeal time has run and the motion has been granted;
- (iii) Upon motion, when a photograph has been substituted for a large or cumbersome exhibit and the motion is granted;
- (iv) Any exhibit may be disposed of or substituted for according to the applicable records retention and disposition schedule of the State Records Administrator. Exhibits shall first be returned to party or counsel if they can be determined. Thirty (30) days notice will be given prior to the disposal of any exhibit. If the exhibit is not claimed it may be destroyed. The disposition of exhibits shall further be controlled by Neb. Rev. Stat. §§ 24-1004 (Reissue 1989) and 84-1201 to 84-1220 (Reissue 1994).

Adopted effective November 3, 1995.

RULE 11-8

COURTROOM SECURITY

All defendants in criminal cases shall be searched by the sheriff or sheriff's deputies prior to entering the courtroom. All such searches shall be conducted in private and as

unobtrusively as possible. The sheriff or deputies shall be present during all criminal proceedings and at such other times as requested by the court.

Adopted effective November 3, 1995.

RULE 11-9

COURT FILES

Court files, transcripts, and bills of exception may be checked out by attorney, their staffs, abstracters or any other person with the permission of the court for not more than ten days. No file shall be checked out without notifying the Clerk of the District Court or a deputy clerk.

Adopted effective November 3, 1995.

RULE 11-10

WORK RELEASE

Any applicant for work release shall, in the application, waive confidentiality and give permission to the sheriff to review the presentence investigation of the defendant.

Any defendant granted work release shall only attend work and proceed to and from work by the most direct route. Work release shall be terminated if the defendant goes to any other place, including home, shops, or friends houses, other than a place to obtain a meal during the course of employment. At no time shall any defendant enter a place where alcohol is served as the main business. This rule may not be waived except by direct order of the court.

Adopted effective November 3, 1995.

PROPERTY STATEMENT

* indicates desired by W, # indicates desired by H

V.

CASE NO. _____

ITEM

POSSESSION

W VALUE H VALUE

REAL ESTATE:

MOTOR VEHICLES:

_____ VIN _____

_____ VIN _____

_____ VIN _____

_____ VIN _____

_____ VIN _____

RECREATIONAL ITEMS (BOATS, TRAILERS, ETC.)

[illegible]

[illegible]

BANK ACCOUNTS, IRA'S, RETIREMENT ACCOUNTS, TIER II ACCOUNTS, LIFE
INSURANCE POLICIES WITH CASH VALUE, STOCKS, BONDS, ETC.:
(Include Acct. Numbers and Name and Address of Bank, Insurance Co., etc.)

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DEBTS OF THE MARRIAGE:

Secured: (List item of property secured.)

Unsecured

ASSETS BROUGHT INTO MARRIAGE:

(List only those items still in the possession of one of the parties or those items that have been sold and the proceeds of sale are directly traceable to present assets of the parties and have not become co-mingled with the entire marital estate.)

ASSETS WIFE BROUGHT INTO MARRIAGE:

ASSETS HUSBAND BROUGHT INTO MARRIAGE:

DEBTS WIFE BROUGHT INTO MARRIAGE:

DEBTS HUSBAND BROUGHT INTO MARRIAGE:
